

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

<b>In Re:</b>	<b>§</b>	<b>Chapter 11</b>
	<b>§</b>	
<b>W.R. GRACE &amp; CO., et al.,</b>	<b>§</b>	<b>Jointly Administered</b>
	<b>§</b>	<b>Case No. 01-01139 (JKF)</b>
<b>Debtors.</b>	<b>§</b>	
	<b>§</b>	

**FEE AUDITOR'S AMENDED FINAL REPORT REGARDING  
FEE APPLICATION FOR THE PERIOD JANUARY 1, 2006 THROUGH FEBRUARY 5,  
2006 and FOR FINAL ALLOWANCE OF COMPENSATION AND REIMBURSEMENT  
OF EXPENSES FOR SWIDLER BERLIN, LLP**

This is the amended final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Interim Application for the Period January 1, 2006 through February 5, 2006 and Final Allowance of Compensation and Reimbursement of Expenses for Swidler Berlin, LLP (the “Application”).

**BACKGROUND**

1. Swidler Berlin, LLP (SBSF), was retained as counsel to David T. Austern, legal representative for future asbestos claimants. In the Application, SBSF seeks approval of interim fees totaling \$20,998.50<sup>1</sup> and interim expenses totaling \$3,483.45 for its services from January 1, 2006 through February 5, 2006; and final fees totaling \$1,519,988.75<sup>2</sup> and costs totaling \$95,633.10<sup>3</sup> for

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<sup>1</sup>Subsequent to the filing of our original final report for this period, SBSF reached an agreement with the U.S. Trustee’s office to reduce its final fee request by \$6,298.50. It is our understanding that this reduction was taken with regard to a Swidler associate billing at normal rates for some tasks deemed more appropriate for a paralegal to perform during the 20<sup>th</sup> Interim Period.

<sup>2</sup>SBSF’s final application reflects all prior interim fee reductions recommended by the fee auditor and subsequently approved by the Court. It also reflects a reduction in fees of \$795.00

all of its services in the above-captioned bankruptcy proceeding from May 24, 2004, through February 5, 2006.

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2001, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. 330, Issued January 30, 1996, (the "Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. New information caused us to amend our previous report.

#### **CURRENT INTERIM APPLICATION**

3. In the current interim application, SBSF seeks approval of fees totaling \$20,998.50 and costs totaling \$3,483.45 for its services from January 1, 2006, through February 5, 2006. In keeping with the agreement referenced in footnote #1, we concur with the reduction of \$6,298.50 in fees and recommend that amount be deducted from the SBSF fee total. That reduction (\$6,298.50) is reflected in SBSF's final application for compensation for services rendered and

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made by SBSF through an agreement with the U.S. Trustee's office and approved by the Court for the 18<sup>th</sup> Interim Period. This fee total does not, however, reflect the \$6,298.50 reduction referenced in footnote #1.

<sup>3</sup>SBSF's final application reflects all prior interim expense reductions recommended by the fee auditor and subsequently approved by the Court.

reimbursement of expenses. Thus we recommend approval of fees totaling \$14,700.00 and costs totaling \$3,483.45 for SBSF's services from January 1, 2006, through February 5, 2006.

### **PRIOR INTERIM APPLICATIONS**

4. We note that we previously filed the following final reports for each of SBSF's prior interim applications, which final reports we incorporate by reference herein:

13<sup>th</sup> Period: Fee Auditor's Final Report Regarding Thirteenth Interim Application of Swidler Berlin LLP (Docket #6994), filed on or about November 18, 2004, in which we recommend approval of fees totaling \$116,538.50 and costs totaling \$15,846.02, reflecting our recommend reductions of \$4,142.50 in fees, as further explained in paragraph 5 of that final report. These recommendations were adopted by the court in the Order Granting Thirteenth Interim Fee Application Requests, dated January 26, 2005. (Docket #7622).

14<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Fourteenth Interim Period (Docket #7982), filed on or about March 8, 2005, in which we recommend approval of fees totaling \$296,073.25 and costs totaling \$14,400.95, as explained in paragraph 21of that final report. These recommendations were adopted by the court in the Order Granting Fourteenth Interim Fee Application Requests, dated March 22, 2005. (Docket #8081).

15<sup>th</sup> Period Fee Auditor's Final Report Regarding Fifteenth Interim Application of Swidler Berlin LLP (Docket #8572), filed on or about June 8, 2005, in which we recommend approval of fees totaling \$294,835.25 and costs totaling

\$16,887.09, reflecting our recommend reductions of \$229.00 in fees and \$141.80 in expenses, as further explained in paragraph 9 of that final report. These recommendations were adopted by the court in the Order Granting Fifteenth Interim Fee Application Requests, dated June 29, 2005. (Docket #8728).

16<sup>th</sup> Period Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Sixteenth Interim Period (Docket #9387), filed on or about September 12, 2005, in which we recommend approval of fees totaling \$246,711.75 and costs totaling \$13,701.96, as explained in paragraph 23 of that final report. These recommendations were adopted by the court in the Order Granting Fourteenth Interim Fee Application Requests, dated September 27, 2005. (Docket #9513).

17<sup>th</sup> Period Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Seventeenth Interim Period (Docket #11168), filed on or about November 28, 2005, in which we recommend approval of fees totaling \$196,107.25 and costs totaling \$2,662.44, as explained in paragraph 24 of that final report. These recommendations were adopted by the court in the Order Granting Fourteenth Interim Fee Application Requests, dated December 21, 2005. (Docket #11402).

18<sup>th</sup> Period Fee Auditor's Final Report Regarding Eighteenth Interim Application of Swidler Berlin LLP (Docket #11936), filed on or about March 3, 2006, in which we recommend approval of fees totaling \$153,118.50 and costs

totaling \$13,177.53, reflecting our recommended reductions of \$3,927.00 in fees, as further explained in paragraph 5 of that final report. Through a separate agreement with the U.S. Trustee's office, SBSF further reduced its fees by \$795.00, bringing the total fee reduction for the interim to \$4,722.00. These recommendations were adopted by the court in the Order Granting Fourteenth Interim Fee Application Requests, dated March 27, 2006. (Docket #12121).

19<sup>th</sup> Period Fee Auditor's Final Report Regarding Nineteenth Interim Application of Swidler Berlin LLP (Docket #12628), filed on or about June 12, 2006, in which we recommend approval of fees totaling \$196,400.75 and costs totaling \$15,473.66, reflecting our recommended reduction of \$103.47 in expenses, as further explained in paragraph 5 of that final report. These recommendations were adopted by the court in the Order Granting Fourteenth Interim Fee Application Requests, dated June 16, 2006. (Docket #12660).

## CONCLUSION

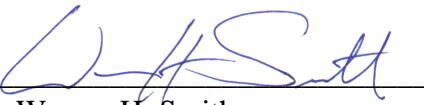
5. Thus we recommend approval of fees totaling \$1,513,690.25<sup>4</sup> (\$1,529,082.25 minus \$15,392.00) and costs totaling \$95,633.10 (\$95,878.37 minus \$245.27) for SBSF's services from May 24, 2004, through February 5, 2006.

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<sup>4</sup>A Certification of Counsel (Docket #13218) and a Certificate of Service were filed by Phillips, Goldman & Spence, P.A. on September 13, 2006, whereby SBSF applied for final fees of \$1,513,690.25 and final costs of \$95,633.10. These fee and expense totals reflect all prior and present interim reductions, including the \$6,298.50 reduction referenced in footnote #1.

Respectfully submitted,

**WARREN H. SMITH & ASSOCIATES, P.C.**

By: 

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**FEE AUDITOR**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served First Class United States mail to the attached service list on this 15<sup>th</sup> day of September, 2006.



Warren H. Smith

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